

STATE OF MICHIGAN
COURT OF APPEALS

ROY CRACCHIOLO

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

August 6, 1999

No. 208042

Michigan Tax Tribunal

LC No. 215668

Before: Markey, P.J., and McDonald and Fitzgerald, JJ.

McDONALD, J. (*dissenting*).

I dissent.

This Court reviews the decision of the Tax Tribunal “to determine whether it is authorized by law and whether it is supported by competent, material and substantial evidence on the whole record.” *Peterson v Treasury Dep’t*, 145 Mich App 445, 449; 377 NW2d 887 (1985), citing Const 1963, at 6, § 28; MCL 600.631; MSA 27A.231; *MCI Telecommunications Corp v Dep’t of Treasury*, 136 Mich App 28, 30; 355 NW2d 627 (1984). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision; it is more than a mere scintilla but less than a preponderance of the evidence. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121 (1994).

The evidence showed petitioner signed the corporation’s 1988 articles of incorporation, 1988 certificate of assumed name, the 1988 sales, use and withholding tax application and the June return, and a 1991 power of attorney authorization. Further, the corporation’s accountant testified that he had always believed petitioner to be the president of the corporation, petitioner’s own attorney admitted, in a letter to respondent, that petitioner was an officer although in name only.

Petitioner’s signature, stamped or otherwise, on the above-named documents is prima facie evidence that he bore responsibility regarding the corporation’s taxes. Because of this prima facie evidence, respondent assessed petitioner with the taxes and penalties in question. His original signature unquestionably appeared on documents dated 1988 and no evidence was presented to show that his status somehow changed between 1988 and the 1989 to 1992 period in question. In addition, the Tax

Tribunal found that petitioner's stamped signature on the tax returns from May 1990 through February 1991 constituted petitioner's signature on these items.

Although petitioner denied giving authorization to use his name on some documents, the truth of such an assertion is for the factfinder to decide. We do not review the Tax Tribunal's findings of fact de novo.

I would conclude the Tax Tribunal's decision is authorized by law and supported by competent, material and substantial evidence on the whole record and would affirm.

/s/ Gary R. McDonald